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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1970

No. 658

HALL H. BAREFOOT, EVERETT REX BISHOP, BILLY J. BIVEN, DONALD J. BREWER, MARVIN R. BROOKIESON, CHARLES D. BROWN, B. J. BURRELL, ROBERT E. CRAIN, DON FERGUSON, JACK HATFIELD, PRESTON L. JOBE, DARWON E. JONES, JOE E. LUNA, HOWARD MORRIS, JEROME F. ROBINSON, T. F. ROBINSON, DON R. STEWART, PRESTON H. TEETER, JESS D. WILKSON,

Petitioners,

VERSUS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association; LOCAL NO. 886, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association; and TRANSCON LINES CORPORATION, a corporation,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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September, 1970

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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In the
Supreme Court of the United States
OCTOBER TERM, 1969

No. _____

HALL H. BAREFOOT, EVERETT REX BISHOP, BILLY J. BIVEN, DONALD J. BREWER, MARVIN R. BROOKIESON, CHARLES D. BROWN, B. J. BURRELL, ROBERT E. CRAIN, DON FERGUSON, JACK HATFIELD, PRESTON L. JOBE, DARWON E. JONES, JOE E. LUNA, HOWARD MORRIS, JEROME F. ROBINSON, T. F. ROBINSON, DON R. STEWART, PRESTON H. TEETER, JESS D. WILKSON,

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VERSUS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association; LOCAL NO. 886, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association; and TRANSCON LINES CORPORATION, a corporation,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners named above respectfully pray that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Tenth Circuit, which judgment reversed the decision of the United States District Court for the Western District of Oklahoma.

OPINIONS BELOW

The Opinion of the Court of Appeals is reported at 424 F.2d 1001, and appears as Appendix A, *infra*. The decision of the District Court is unreported, and was embodied in a written order denying respondent's motion to dismiss, and findings of fact and conclusions of law in connection therewith, which appears as Appendix B, *infra*.

JURISDICTION

The opinion and judgment of the Court of Appeals was entered on March 31, 1970. Petition for rehearing was timely filed, and denied by order entered June 12, 1970. See Appendix C, *infra*. This Petition for Certiorari was filed less than ninety days after the order denying rehearing. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

(1) Does venue jurisdiction under 29 U.S.C. § 185(c) of a suit for damages against an international labor union by some of its members alleging a tortious breach of the union's duty to fairly represent its members in a labor controversy depend upon residence or physical presence of an authorized representative of the international union in the district in which suit is brought?

(2) Does the president of a local chapter of the Teamsters Union have actual or apparent authority sufficient to make him an agent of the International Union for purposes of venue under 29 U.S.C. § 185(c)?

(3) Will venue of such an action lie in a district in which international union officials have engaged in representing or acting for employee members by advice and instructions relayed by telephone or through directives given through officials of the local union?

STATUTES INVOLVED

29 U.S.C. § 185(c) reads as follows:

> "(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

STATEMENT OF THE CASE

At the time of the events which gave rise to this action, Appellants (plaintiffs in the District Court) were members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, an unincorporated labor organization, and of Local No. 886 of the Teamsters Union, located in Oklahoma City in the Western District of Oklahoma.

This action was brought against the International Union, the local union, and petitioners' employer, Transcon Lines corporation, seeking (as against the unions) money damages for a tortious failure to give petitioners good faith representation as their exclusive representative in labor-management matters. The cause of action was founded

upon 29 U.S.C. §§ 157, 158, 185, 187 and 412; and jurisdiction of the District Court was invoked under 28 U.S.C. § 1331.

Petitioners then were employed as over-the-road truck drivers for Transcon Lines Corporation, an interstate motor carrier. Their complaint states that they had a long-standing controversy with Transcon over unsafe working conditions at their place of employment, resulting from dangerously defective motor equipment, and unsafe conditions at the Oklahoma City terminal.

After repeated efforts by negotiation and through established grievance procedures had produced no corrective measures, the union recommended that petitioners walk off their jobs to force Transcon to undertake good faith negotiations for correction of the dangerous conditions. The president of the local union, after consultation with regional officials of the International Union in Dallas, Texas, informed petitioners that both the local and the international unions fully supported petitioners in a work stoppage; but for their own protection, the unions would have to publicly pretend to oppose the strike. Union leaders counselled petitioners to pay no attention to any union demands that they return to work; and if any were discharged, the unions would officially sanction the strike and force their reinstatement.

On May 27, a number of employees, including petitioners, quit their labor in good faith as a result of abnormally dangerous working conditions. The work stoppage continued for some 3½ days, during some portion of which the entire force of some 1,000 persons was not working. During this period, union officials publicly called on their

members to return to work, while privately urging and encouraging them to continue to withhold their labor.

The employer discharged some 88 persons, for the stated reason of participating in an unauthorized work stoppage. Later 37 of these were re-employed, but reinstatement of petitioners was refused.

The unions did file grievance proceedings to secure petitioners' reinstatement. However, union officials failed to afford petitioners fair and adequate representation carried out with honesty and good faith in those proceedings. The president of the local union voluntarily agreed on behalf of petitioners that all 88 cases be heard jointly, in the absence of those affected. Union officials falsely asserted that the work stoppage was unauthorized by the unions; and corruptly stipulated that the work stoppage constituted an unlawful violation of existing labor agreements. Union officials wholly failed to present the true facts: that a work stoppage such as this, arising out of abnormally dangerous working conditions, was not an unlawful strike at all.

Having thus been "pled guilty" in their absence by their exclusive union representatives, petitioners were deprived of an opportunity to have their individual grievances heard on the merits of each; and to show that the work stoppage was a protected activity and their discharge unlawful. Accordingly, their grievances were dismissed, and their discharge upheld.

Thereafter, union officials continuously represented to petitioners that no further recourse was open to them, by appeal or otherwise; and petitioners took no further action

to seek their reinstatement until the time prescribed by the labor contract for doing so had expired. As a result, certain subsequent grievance actions instituted by petitioners when they learned independently of further available remedies were dismissed as untimely.

Petitioners contend that the unions and the employer entered into a conspiracy to utilize these events as a device to purge the local union of members unwanted by or distasteful to either the union leadership or the employer for any reason, whether or not related to the particular work stoppage.

Petitioners sought damages from the unions for total or partial loss of compensation which they would have earned except for their wrongful discharge, and the failure of the unions to give them fair and honest representation and protection.

The International Union filed its motion to dismiss the action upon grounds, among others, that venue jurisdiction of the action as prescribed by 29 U.S.C. § 185(c) did not lie in the Western District of Oklahoma. An evidentiary hearing was held upon the issue, at the conclusion of which, the District Court overruled the motion to dismiss. The union's application for certification of the question for interlocutory appeal was granted, and the appeal was perfected.

The District Court found that the District Court for the Western District of Oklahoma did have venue jurisdiction of this action against the International Union pursuant to 29 U.S.C. § 185(c) (2) for the reason that "its duly authorized officers or agents are engaged in representing or acting for employee members" in that district. (See Appendix B, ¶¶ 3, 6-10 incl.)

The International Union has no official representatives who are residents of the Western District of Oklahoma. An International vice-president and another official representative of the Southern Conference of Teamsters reside in Dallas, Texas. The president of the local union frequently consulted, in person and by telephone, with these and other official representatives of the International Union on the course of action to take in union matters. In such cases, local decision would be postponed pending a decision from the International, and the advice and instructions received would be treated as a directive. (See Appendix B, ¶¶ 3, 6, 7.)

The International Union, and its official representatives did advise and represent local union members, both directly and indirectly through the president of the local union, on a variety of labor matters, including the particular controversy which gave rise to the work stoppage and to this action. (See Appendix B, ¶¶ 7, 8, 9.) Just prior to the strike, the local president had conferred with the Dallas officials of the International as to the drivers' grievances, and conveyed to petitioners the union's position and recommendations set out above. (See Appendix B, ¶ 9.)

The District Court concluded that the International Union was "engaged in representing or acting for its employee members" in the Western District of Oklahoma; and thereupon the International Union's motion to dismiss was denied.

Pursuant to 28 U.S.C. § 1292(b), the District Court certified for interlocutory appeal the question . . .

". . . whether the venue requirements of Section 185(c) are satisfied as to the International Brother-

hood of Teamsters by the activities within the district of B. H. Pannell during the period of time indicated, and by the responsible representatives of the International Union headquartered in Dallas advising and representing members of Local 886 by telephone or through consultation with and directions given to B. H. Pannell, or its actual physical presence within the Western District of officers or agents, as such, of the International necessary to sustain venue-jurisdiction under Section 185(c) of Title 29; . . ."

The Court of Appeals reversed the decision of the District Court, with instructions to grant the motion to dismiss as to the International Union. The opinion by LEWIS, Circuit Judge, recited the facts and circumstances of the case substantially as set out above (see Appendix A, *infra*); and considered two questions: (1) whether the local president was an agent of the International; and (2) whether physical presence of an authorized representative in the district is unnecessary since the acts and directives of the International from elsewhere had a distinct effect in the district.

On the first question, the Court of Appeals held (contrary to *International Brotherhood of Teamsters, etc., et al. v. U. S.*, 4 Cir., 275 F.2d 610) that the Teamsters' constitution does not establish the local unions as subdivisions of the International, and there was insufficient additional evidence that the local president had actual or apparent authority to act for the International.

On the second question, the Court of Appeals held that regardless of virtually complete control over local affairs admittedly exerted by the International Union, and the demonstrable effect thereof within the district, the venue

requirement of § 185(c) "presupposes the physical presence of a bona fide representative within the district."

REASONS FOR GRANTING THE WRIT

Petitioners respectfully submit that several compelling reasons exist for granting the writ prayed for. These are:

(1) The decision of the Court of Appeals is in conflict with applicable decisions of this Court. The case of *Denver & R. G. W. R. Co.* v. *Brotherhood of R. Trainmen*, 387 U.S. 556, dealt with venue of a similar damage suit against a labor union subject to the Railway Labor Act, 45 U.S.C. § 151 *et seq.* In the opinion, the Court found it the intent of Congress to permit suit against a multi-state unincorporated labor union wherever it is "doing business," citing 29 U.S.C. § 185(c) as indicative of that intent as to a labor union subject to the Labor-Management Relations Act. While the language of the Court at pp. 562-563 of 387 U.S. may be *dicta* with respect to an action under 29 U.S.C. § 185(c), the doctrine there expressed is that venue in such a case is proper "anywhere the responsible representatives of the Union take concrete action." The decision of the Court of Appeals that "physical presence of a bona fide representative (of the Union) within the district" is necessary to sustain venue under 29 U.S.C. § 185(c) (2) is contrary to "doing business" test enunciated by this Court in the *Denver & R. G. W. R.* case. To grant this writ will enable this Court authoritatively to extend the doctrine of the *Denver & R. G. W. R.* case to causes, far greater in number, arising under the Labor-Management Relations Act.

(2) The decision of the Court of Appeals for the Tenth Circuit in this case is in irreconcilable conflict with the decision of the Court of Appeals for the Fourth Circuit in *International Brotherhood of Teamsters, etc., et al.* v. *U. S.*, 4 Cir., 275 F.2d 610. That case upheld the validity of service of process on the secretary-treasurer of a local of the same Teamsters Union. A much stronger showing of an agency relation would be required to establish authority of a union representative to receive service of process than would be necessary to meet the test of "engaging in representing or acting for employee members" under § 185(c). The Fourth Circuit on the basis alone of the International Constitution of the Teamsters held that "the local is no autonomous body but a subdivision" of the Teamsters International. Both the boycott in the Fourth Circuit case and the strike in this case are acts which a local union cannot engage in without specific approval of the International Union. The Tenth Circuit attempted to brush off the *Teamsters* case, *supra*, merely by saying that the union there was "under trusteeship." But it was on the basis of the union constitution itself irrespective of trusteeship that the Fourth Circuit held that any claim that a local official of the Teamsters Union acts only for an autonomous local union and not for the International Union "cannot be squared with reality."

(3) The decision of the Court of Appeals in this case is in conflict with its own decisions in other cases on the same subject. The same court in *International Union of Operating Engineers* v. *Metropolitan-Gill-Tecon*, 10 Cir., 400 F.2d 261, upheld venue jurisdiction of an international union under § 185(c), rejecting the claim that the Inter-

national Union's local representative had no authority to "represent or act for employee members."

The Court held that to permit a union representative to "carry the weighty mantle of authority and force of the International Union" in labor matters, and then allow the union to escape responsibility merely by denying his authority "would be at least a partial victory of form over substance." It would be every bit as much a victory of form over substance to permit an International to direct and control local union activity and dictate the actions of local union members, and then escape responsibility for corrupt or irresponsible actions by asserting that the directions were given in conference or by telephone by union officials whose bodies were in another district.

The Court of Appeals in the *Metropolitan* case correctly held that venue-jurisdiction under § 185(c) should depend upon what the union is actually doing in the district, rather than its definition of responsibilities in its own internal management. (Citing *Denver & R. G. W. R. Co.* v. *Brotherhood of R. Trainmen, supra.*) The decision in this case is in irreconcilable conflict with that principle.

(4) The question whether a labor union may be sued in a district where it advises and represents its members—and indeed dictates union policy and actions—even absent the residence or physical presence of official representatives there, is an important issue which has not been, but should be, decided by this Court.

The intent of Congress in enacting the Labor-Management Relations Act and 29 U.S.C. § 185(c) was to expand, not limit, the availability of a forum for an action against

a labor organization. *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502. The act contemplated that an international union be subject to suit in a district in which it is "doing business" in the corporate sense—that is, advising and representing local members, and fashioning and carrying out union policy and actions. *Denver & R. G. W. R. Co.* v. *Brotherhood of R. Trainmen, supra.* It is absurd, and a giant step backward, to say that the union is "doing business" in a district only when the body of some official of the International invades the territory of the district; even though the International Union may be exercising complete control of its local members, and dictating their courses of action by telephone or through a messenger the membership is taught to accept as the bearer of the official word.

Just as the Court of Appeals said in *International Union of Operating Engineers* v. *Metropolitan-Gill-Tecon, supra*, the International Union "is not entitled to the best of both worlds—on the one hand being able to swing its weight, and on the other being able to avoid responsibility therefor." The decision in this case is a significant contribution to the evil result of the Court of Appeals itself condemns.

As a practical matter, the doctrine adopted here by the Court of Appeals would effectively limit venue, if a union so desired, to the districts respectively of its national headquarters and its regional offices. So long as the union used care to exercise its weight only by telephone or through the mouths of local union officials, it would be safe from suit in any other district. Such a result is directly contrary to the manifest intent of Congress in enacting the Labor-Management Relations Act, and 29 U.S.C. § 185(c).

CONCLUSION

The decision of the Court of Appeals is clearly erroneous. It runs contrary both to the language and the intent of Congress in enacting 29 U.S.C. § 185(c). The decision is inconsistent with the modern body of applicable law as announced in the decisions of this Court and authoritative decisions in other circuits. The theory enunciated by the Court of Appeals would impede sound and efficient administration of the law and would work hardship and injustice upon litigants entitled to reasonable access to the federal courts in the district of their residence, and in the district in which their cause of action arose.

Respectfully submitted,

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September, 1970

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

March Term, 1970

FILED
United States Court of Appeals
Tenth Circuit
Mar 31 1970
WILLIAM L. WHITTAKER
Clerk

HALL H. BAREFOOT, EVERETT REX BISHOP, BILLY J. BIVEN, DONALD J. BREWER, MARVIN R. BROOKIESON, CHARLES D. BROWN, B. J. BURRELL, ROBERT E. CRAIN, DON FERGUSON, JACK HATFIELD, PRESTON L. JOBE, DARWON E. JONES, JOE E. LUNA, HOWARD MORRIS, JEROME F. ROBINSON, T. F. ROBINSON, DON R. STEWART, PRESTON H. TEETER, JESS D. WILKSON,

Plaintiffs, Appellees,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association,

Defendant, Appellant,

LOCAL NO. 886, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an unincorporated association, and TRANSCON LINES CORPORATION, a corporation,

Defendants,

CHARLES B. MORSE, MILES HAMPER, SCOTT BENJAMIN, and PAUL ALDRIDGE,

Intervening Plaintiffs.

No. 238-69

[APPENDIX]

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

L. N. Wells of Mullinax, Wells, Mauzy & Collins, Dallas, Texas, for Appellant.

Charles Ellis (Charles R. Nesbitt and Robert N. Naifeh, of counsel, Oklahoma City, Oklahoma, were with him on the brief) for Appelles and Intervening Plaintiffs.

Before LEWIS and HILL, Circuit Judges, and LANGLEY, District Judge.

LEWIS, Circuit Judge.

This is an interlocutory appeal, duly certified from the Western District of Oklahoma and authorized pursuant to 28 U.S.C. § 1292(b), taken by the International Brotherhood of Teamsters, etc. (International) following denial by the district court of a motion to dismiss International from the principal case for lack of venue jurisdiction under 29 U.S.C. § 185(c).[1] Plaintiffs in such case are former members of both International and Local 886 (Local) and ex-employees of defendant Transcon Lines Corporation (Transcon). They seek money damages for their alleged wrongful discharge from employment while engaged in a strike. The present appeal probes only the question of whether the allegations of the complaint and correlative facts adduced at an evidentiary hearing show sufficient in-

[1] 29 U.S.C. § 185(c) states in full:

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

volvement by International in the course of events surrounding the strike as to lodge jurisdiction in the Oklahoma district court.

Both the Local union and Transcon are located in Oklahoma City, Oklahoma. B. H. Pannell was, at all times relevant to this appeal, the duly elected president of the Local. In May, 1967, several members of the Local employed by Transcon, including the plaintiffs, met with Pannell in order to determine what collective action could be taken by the Local to rectify long-standing labor grievances with Transcon. The employees maintained that working conditions and equipment at Transcon were unsafe in several respects and that Transcon had, for several years prior to this time, refused to remedy these conditions. At the meeting it was decided by the membership that in light of Transcon's apparent intransigence no means other than a work shut-down would serve to effect the desired changes. Pannell concurred in the necessity of striking Transcon but advised the union members that neither the Local nor International could officially endorse the strike. The strikers would be covertly supported yet publicly disclaimed by both union organizations. Previous to this meeting, Pannell had repeatedly consulted by telephone with International officials in Dallas concerning the impending confrontation with Transcon, seeking advice and direction from the international organization. As a result of these consultations, Pannell was apprised of the posture to be taken by International should a strike occur and as a further consequence formed his own position, reflected by the Local, to correspond with that stated policy. As found by the court below, Pannell on this and other occasions regarded the advice and instructions obtained from Dallas as "directives" and transmitted the substance of these consultations to the Local members in the same vein. However, there is no evidence in the record to indicate that International officials intended or were attempting to dictate the course of events in Okla-

homa City. Rather, the record only supports the inference that International merely indicated what would be the nature of its response to the course of events dictated by the affirmative conduct of the Local union and Transcon.[2]

The strike was executed as planned; the plaintiffs were discharged by Transcon; and neither the Local nor International took action to reinstate them. Evidence was introduced at the evidentiary hearing to the effect that Pannell had consulted further with International after the initiation of the strike and had been "directed" to inform union members that in the event of the discharge of striking Transcon employees, International would sanction the strike and take action to have them reinstated. In this instance, Pannell actually journeyed to Dallas to consult personally with International officials there. However, International had no paid representatives or employees within the Western District of Oklahoma and no representatives were physically sent to the district during the period in question. The relationship between Pannell and International officials consisted only of telephonic communications and at least one consultation in Dallas. The interlocutory issue was thus certified to us as

> . . . whether the venue requirements of Section 185(c) are satisfied as to the International Brotherhood of Teamsters by the activities within the district of B. H. Pannell during the period of time indicated, and by the responsible representatives of the International Union headquartered in Dallas advising and representing members of Local 886 by telephone or through consultation with and directions given to B. H. Pannell, or is

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[2] Pannell was reported by one of plaintiffs' witnesses to have stated "that Dallas had told him there wasn't any legal grounds for them to shut it down, that it had to be a wildcat." No evidence was introduced showing that "Dallas" had instructed or even suggested that the Local should strike, before the plans to do so had, in fact, been laid by the Local itself.

actual physical presence within the Western District of officers or agents, as such, of the International necessary to sustain venue-jurisdiction under Section 185(c) of Title 29; and, in any event, must there be a showing of the requisite activities by agents at the time suit is filed or is presence at the time the cause of action arose sufficient to meet the venue requirements of Section 185(c).

The issue as so framed would seem to contemplate two possible theories as bases for the imposition of jurisdiction. First, it may be that the court considered the close and continued nexus of consultations between Pannell and International officials, coupled with the high degree of control which the Teamsters constitution gives the national body over its local affiliates, to have created a principal-agency relationship sufficient to satisfy the venue provision in question. Alternatively, the assertion of venue could be grounded on the theory that actual physical presence within the district is unnecessary since the "directives" issued by International officials had a distinct effect within the district.

If Pannell could be demonstrably established to have been acting as the agent of International according to the general rules of the agency, venue over the principal could be sustained on that basis. United Steelworkers of America v. CCI Corp., 10 Cir., 395 F2 529, 532; cf. 29 U.S.C. § 185(e). And the appellees contend that both the internal rules of the labor organizations in question and the principle of apparent authority establish that relationship. However, the provisions of the Teamsters constitution do not, standing alone, directly create agency but do grant to the national body broad if not plenary powers of supervision and control over the local affiliates. In International Bro. of Teamsters v. United States, 275 F2 610, the Fourth Circuit held that these provisions of the labor constitution created a relationship of principal and agent between International and

the Local within the meaning of section 185(c): ". . . the local is no autonomous body, but [is] a subdivision of International subject to International's control." 275 F2 at 614. However, the local union in *Teamsters* was in trusteeship and, therefore under the direct and immediate control of International. Indeed, the official of the local found by the court to have been acting as the agent of International had been expressly designated as such by the trustee, an official of International. Consequently, it is doubtful that the court meant to base jurisdiction over the national organization solely upon provisions of the union's own rules when it was plainly unnecessary to do so. In any event, the autonomy of the national union organizations, compromised only when statutory and applicable common law rules of agency so indicate, has been long recognized. *See* United Mine Workers of America v. Gibbs, 383 U.S. 715, 736; Brotherhood of Carpenters v. United States, 330 U.S. 395. 403. Section 185 (c) itself, setting out the criteria for the assertion of venue-jurisdiction over a labor organization, necessarily presupposes the autonomy of a national labor organization; to interpret the statute otherwise would negate the necessity of its existence. We hold that the Teamsters constitution neither establishes nor negatives as a matter of law a relationship of principal-agent controlling the International's responsibility in a particular dispute such as we here consider. As we have earlier said in International Union of Operating Engineers v. Metropolitan-Gill-Tecon, 400 F2 261, 264,

> It seems elementary that venue-jurisdiction should depend on what a party is actually doing through its authorized representatives in a given area rather than on how it defines responsibilities, functions, etc. in its internal management. The parties across the table and the public in general are concerned with the actual impact of the presence of a union official and not with the definitions of his function as set out somewhere unbeknown to them.

A contrary rule would allow the labor organizations themselves to establish the contours of federal jurisdiction in any given instance, a situation clearly not contemplated under the statute.

An agency relationship may, of course, be established through actual conduct of the parties and regardless of written or other specific authority negativing or limiting the existence or extent of an agency.[3] The appellee thus argues, as the decision of the district court implies, that Pannell's representation of the strategy which emerged from the consultations with International officials as "directives" constituted such an instance of apparent authority. It is generally understood, however, that the ostensible authorization must result from the words and conduct of the principal rather than the agent. In both United Steelworkers of America v. CCI Corp., *supra*, and International Union of Operating Engineers v. Metropolitan-Gill-Tecon, *supra*, the national organization had dispatched a representative in the district to engage in collective bargaining, a clear instance of conduct by the principal relied upon by those involved in the labor dispute as establishing the authority of that representative. In each case the national organization became subject to the jurisdiction of the district in which bargaining occurred even though the representative had gone beyond his designated sphere of authority. In this case no International representative was sent to Oklahoma City; no designated sphere of authority was ever established. In sum, there is no evidence tending to establish Pannell's apparent or actual authority other than testimony

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[3] Restatement (Second) of Agency § 27, sets out the general rule in this respect:

> . . . Apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

relating to the words and conduct of Pannell himself. Such evidence is insufficient to establish International as Pannell's principal.

In *Metropolitan* we stated that the pivotal consideration in resolving the question of venue-jurisdiction under section 185(c) was "the actual fact of union activity in a given area by a bona fide union representative as opposed to the fact of his being authorized or unauthorized to do a particular act." 400 F2 263, 264. Possibly in light of this statement, the district court considered the degree of influence which International officials apparently exercised over Pannell in the transaction of events under examination, indicating that the creation of ascertainable effect within a given area, even in the absence of the physical presence of a duly authorized agent, was a satisfactory basis for venue. However, the kind of pragmatic analysis contemplated in *Metropolitan* presupposes physical presence of a bona fide representative within the district. Once a national labor organization has manifested its presence in a local labor dispute for the purpose of influencing or dictating union policy, assertion of venue over that organization is clearly contemplated by section 185(c) and cannot be evaded by reliance upon internal rules limiting the agent's authority. Conversely, when, as in the instant case, a labor organization's role in a dispute has been responsive rather than affirmative and conducted outside of the district, then its liability to suit in that district is clearly not contemplated by section 185(c). As a national supervisory organization, it is inevitable that the enunciations of policy, advice and instructions given by International to local affiliates will, when implemented, have an effect on local labor disputes. However, such an effect cannot be equated with the representing or acting for employee members by a duly authorized agent within the district, the criteria established by section 185(c).

The appellant's argument that the venue requirements must exist at the time suit is filed, also certified for review, need not be considered since, as we hold, venue was improper in any event.

The case is remanded to the district court with instructions to grant the motion to dismiss.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

HALL H. BAREFOOT, ET AL.	)	
v.	)	No. 68-228
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL	)	

ORDER DENYING MOTION TO DISMISS, AND FINDINGS OF FACT AND CONCLUSION OF LAW

The Court having taken into consideration the Order of the Court of Appeals for the Tenth Circuit on the Application for Permission to take an interlocutory appeal in this cause, enters the following order nunc pro tunc and makes the following Findings of Fact and Conclusions of Law which findings are limited to the issue of venue-jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in this cause;

1.

Venue-jurisdiction as to the International Brotherhood of Teamsters is governed by the provisions of Section 185 (c) of Title 29 of the United States Code.

2.

Defendant asserts that it has neither officers nor agents performing the functions contemplated by Section 185(c) within the Western District of Oklahoma.

3.

Plaintiffs contend the International Brotherhood, through its responsible representatives, is engaged in performing the functions contemplated by Section 185(c) in the Western District of Oklahoma. They contend that the International Brotherhood exercised direct supervision and control over the activities and affairs whenever it was deemed necessary or advantageous to do so, and sent its authorized representatives to Oklahoma City for the purpose from time to time as necessary. Plaintiffs further contend that the International Brotherhood was engaged in advising and representing members of Local 886 directly by responsible representatives with office and headquarters in Dallas, Texas and by them through B. H. Pannell, president of Local 886.

4.

Local Union 886 is affiliated with the International Brotherhood of Teamsters; the relationship between Local 886 and the International Brotherhood of Teamsters is established and governed by the Constitution of the International Brotherhood of Teamsters and the affairs of the Local are governed by its bylaws.

5.

B. H. Pannell is the president of Local 886, elected by the membership of the Local in the winter of 1967. Pannell is engaged in the representation of employee-members of Local 886 in the Western District of Oklahoma within the meaning of Section 185(c).

6.

The International Brotherhood maintains no paid representatives or employees who are residents of the Western District of Oklahoma, nor does it maintain an official office in the district. The International has a vice-president named M. W. Miller, who is also an official of the Southern Conference of Teamsters, and who resides and has his office in Dallas, Texas. At the same office is Ralph Dixon, also a full time paid official of the Southern Conference of Teamsters. Both persons are responsible representatives of the International Brotherhood as the term is used in Section 185(c).

7.

I find on the basis of the testimony of witnesses Brown and Brewer, from time to time and frequently, Pannell sought advice and instructions from Miller and Dixon in Dallas, and from other responsible representatives of the International Brotherhood, as to what course to take in union matters; and especially when the question was involved or technical. In those cases, action would be postponed pending a decision from Dallas, and thereafter the advice and/or instructions received from the representatives of the International Union was treated as a directive, and was followed by Pannell in further advising and representing members of Local 886. In this manner, the advice of the responsible representatives of the International Brotherhood was at all times available to members of Local 886 through the president of Local 886, B. H. Pannell. The evidence shows that advice was sought in this manner during the period of time after Pannell assumed the office of president of Local 886 in the winter of 1966 through and into the summer of 1967, during which time the strike in issue and the discharges in question took place.

8.

On one occasion approximately a year prior to the strike involved in this cause, certain members of Local 886 had officially challenged the eligibility of B. H. Pannell to serve as president of the Local. Pannell was suspended from performance of his duties for a period of time, awaiting final determination of his eligibility. At the same time, a three-man commission from the International Brotherhood came to Oklahoma City several months before the strike to determine whether a trusteeship under direct supervision of the International should be imposed on Local 886. The three representatives of the International held a hearing in Oklahoma City for two or three days on the issue. The trusteeship was not imposed, and a telegram was sent to Pannell by Frank Fitzsimmons, International Vice-President, reinstating him as president of Local 886. One Clarence Mendoza, representative of the International Brotherhood, attended meetings of Local 886 both before and after Pannell became president, the last time being the occasion of the trustee hearing a few months prior to the strike.

9.

I find on the basis of the testimony of witnesses Brown and Brewer on Saturday, just prior to the strike in question here, Pannell had been in contact with Dixon as to the grievances of the drivers and their proposed course of action. At a conference with approximately 12 drivers on Saturday afternoon, Pannell conveyed to the drivers the results of his conference with representatives of the International Union, the position taken by the International on the issue, and the actions which would be taken by Pannell and the International in the ensuing strike.

10.

I conclude on the strength of the foregoing that venue-jurisdiction as to International Brotherhood of Teamsters

may be sustained under Section 185(c) of Title 29 of the United States Code.

11.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion of the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for dismissal because of improper venue-jurisdiction is hereby denied.

It is further ORDERED pursuant to the provisions of Title 28, §1292(b) of the United States Code, that this Court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from this order may well materially advance the termination of this litigation. Thus, in accordance with the provision of §1292(b), I am certifying the question of "whether the venue requirements of Section 185(c) are satisfied as to the International Brotherhood of Teamsters by the activities within the district of B. H. Pannell during the period of time indicated, and by the responsible representatives of the International Union headquartered in Dallas advising and representing members of Local 886 by telephone or through consultation with and directions given to B. H. Pannell, or is actual physical presence within the Western District of officers or agents, as such, of the International necessary to sustain venue-jurisdiction under Section 185(c) of Title 29;" and, in any event, must there be a showing of the requisite activities by agents at the time suit is filed or is presence at the time the cause of action arose sufficient to meet the venue requirements of §185(c).

SIGNED and ENTERED this ____ day of February, 1969.

United States District Judge

APPENDIX C

United States Court of Appeals
TENTH CIRCUIT
Office of the Clerk
DENVER, COLORADO 80202

WILLIAM L. WHITTAKER
Clerk

June 12, 1970

TELEPHONE
303-297-3157

Re: No. 238-69, Hall H. Barefoot, et al. v. Int'l Brotherhood of TEAMSTERS, et al, etc.

Mr. Charles R. Nesbitt
Attorney at Law
2316 First National Bldg.
Oklahoma City, Oklahoma

Dear Mr. Nesbitt:

An order has been entered today in the above-captioned case denying the petition for rehearing.

Yours very truly,
WILLIAM L. WHITTAKER
Clerk.

By
Helen R. Bartha
Deputy Clerk.

wlw:hb

CC: Mr. Charles W. Ellis, 1106 Colcord Bldg., Oklahoma City, Oklahoma
Mr. James M. Little, 6th Floor, Hightower Bldg., Oklahoma City, Oklahoma 73102;
Mr. Edward E. Soule, 2210 First Natl. Bldg., Oklahoma City, Oklahoma; 73102.
Mr. L. N. D. Wells, Jr., 1601 Natl. Bankers Life Bldg., Dallas, Texas 75201.